same offence or of different offences committed in the same transaction.

The prosecution was bound to establish that each one of the three appellants was accused of the same offence. In order to establish that they were all accused of and were committing the same offence, it had to be shown that all three were jointly and collectively engaged in the same act of bookmaking. It is clear that they were not charged with committing different offences in the same transaction because each one of them was charged with acting as a bookmaker.

As the learned Chief Justice held in *Teo Kow Chye & Anor.* v. *Public Prosecutor,*[1] the mere fact that two persons are in the same premises when carrying on their alleged unlawful activities is not sufficient to bring them within the provisions of section 169.

Because two or more persons use the same premises for the conduct of their bookmaking activities, it does not, in my view, automatically follow that they are concerned in the commission of the same offence as would, for example, be the case where two or more persons enter the same premises for the purpose of committing a robbery and do, in fact, commit it. It would be clear from the surrounding circumstances that such persons are jointly concerned in one offence of robbery and they can be jointly charged and tried for it. On the other hand, two persons can conduct bookmaking operations whilst in the same premises without necessarily being jointly concerned in the same act of bookmaking. Each one of them may be receiving bets from his own clients over the telephone and recording such bets without the other person being jointly concerned with him in that offence. I do not think that the prosecution can establish that one bookmaker was jointly concerned with another in the same offence merely by showing that he could have thrown out bets to that other or even received bets from that other person. It is, of course, open to the prosecution, if they can, to prove abetment on the part of that other, in which case section 169 would sanction a joint trial. There is no such evidence herein.

In this particular appeal, the only evidence adduced by the prosecution to show that the three appellants were acting jointly in one transaction of bookmaking was that of Leong Ah Chee (P.W.2), an Inspector from the Gambling Suppression Branch of the C.I.D., who gave expert evidence relating to three sets of documents found on a desk in the premises which, according to him, proved that the person in possession of each of these three sets of documents would, in the case of two sets, be bookmakers, and, in the case of the third set, be someone assisting in the business of bookmaking. He denied that any of such persons could have been an agent or a runner of a bookmaker though he seemed to be a little unsure about this. In answer to the court as to whether he thought that the persons in posssession of these three sets could be said to be conducting bookmaking operations individually or jointly, he stated:—

"It depends on the arrangements between them. It could be a syndicate. It could be individually and as races progress they have frequent interchanges of bets. They have more or less business connections, however".

This answer cannot, by any means, be said to show joint participation of the possessors of these documents in the one transaction of bookmaking. There was no other evidence that there was a syndicate of any kind. As I have earlier observed, a syndicate cannot materialise from the mere presence of two or more persons in the same premises, who may be conducting bookmaking operations, each with his own clients.

In my judgment, the joint trial of the three appellants was therefore illegal.

Their appeals are accordingly allowed and their convictions set aside. The fines, if paid, will be refunded.

There will, however, be separate retrials of each appellant. Bail will be extended in each case.

Appeals allowed. Separate retrials ordered.

Solicitors: *Ironside & de Souza.*

CHEONG LEP KEEN & ANOR. v. TAN TIN KEK

[O.C.J. (Gill J.) July 31, 1968]
[Malacca — Civil Suit No. 53 of 1966]

Landlord and Tenant — Lease void for non-registration — Effect of entry and payment of rent.

The plaintiffs in this case claimed possession of certain premises occupied by the defendant. The defendant was in occupation of the premises under an agreement with the previous owner which purported to be a lease for 80 years at a rental of $150 per month. The lease was not registered under the Registration of Deeds Ordinance.

Held, allowing the claim: (1) as the lease was not registered it was void but as the defendant had entered on the premises and paid a monthly rent he must be deemed to hold the premises on a monthly tenancy;

(2) as the monthly tenancy had been validly terminated by a notice to quit, the defendant was in wrongful occupation of the premises and judgment must be given to the plaintiffs.

Toh Ching Kwan v. *Ng Ah Kak & Ors.*[11] not followed.

Cases referred to:—

(1) *Hunt* v. *Luck* [1902] 1 Ch. 428, 433.

(2) *Doe d. Rigge* v. *Bell* (1793), 5 T.R. 471; 101 E.R. 265.

(3) *Clayton* v. *Blakey* (1798), 101 E.R. 1234.

(4) *Tress* v. *Savage* (1854), 4 E.L. & B.L. 36; 119 E.R. 15.

(5) *Braythwayte* v. *Hitchcock* (1842), 10 M. & W. 493, 497; 152 E.R. 565, 567.

(6) *Ladies Hosiery and Underwear Ltd.* v. *Parker* [1930] 1 Ch. 304.

(7) *Adler* v. *Blackman* [1953] 1 K.B. 146.

(8) *Covered Markets Ltd.* v. *Green* [1947] 2 All E.R. 140.

(9) *Bank of Victoria* v. *M'Hutchison* 7 Vict. L.R. 452.

(10) *Box* v. *Attfield* 12 Vict. L.R. 574.

(11) *Toh Ching Kwan* v. *Ng Ah Kak & Anor.* [1955] M.L.J. 151.

CIVIL SUIT.

N. A. Majoribanks for the plaintiffs.

John Ang Soon Poh (*Tara Singh Sidhu* with him) for the defendant.

Cur. Adv. Vult.

Gill J.: The plaintiffs' claim in this action is for the recovery of possession of the ground-floor of premises No. 33, Newcome Road, Malacca and for mesne profits by way of double rent. The gist of their statement of claim is that the defendant was in occupation of the premises as a tenant from month to month at a rental of $150 per month, that such tenancy was duly determined by a written notice dated 1st March, 1966 calling on him to quit on 30th April 1966 and that he is therefore wrongfully holding possession of the premises.

The defendant's case is that he has been at all material times and still is in occupation of the premises as the lawful tenant thereof pursuant to the terms and conditions of the tenancy agreement dated 1st day of November, 1958 between himself and the plaintiffs' predecessor in title, whereby he was granted a tenancy for his lifetime.

The facts of the case are simple. The plaintiffs purchased the premises in 1964. The defendant was then in occupation of the premises, and he had been in occupation since 1st November, 1958 under an agreement with the previous owner which purported to be a lease for 80 years at a rental of $150 a month. The other terms of the agreement are not material for the purpose of this case.

It is common ground that at the time of their purchase of the premises the plaintiffs were made aware of the fact that the defendant was in occupation and that he paid them a monthly rent of $150 after the purchase. There is no evidence, however, that a copy of the tenancy agreement was shown to either of the plaintiffs at about the time of the purchase. The first plaintiff has given evidence to say that when he asked Toh Kim Soon, the previous owner, if there was any written agreement with the defendant the answer was in the negative and that he was not shown any tenancy agreement although negotiations for the sale of the premises took approximately two months. That was as far as his inquiries went and he made no inquiries from the defendant.

The defendant's story is that Toh Kim Soon, when he came to the premises together with the first plaintiff at about the time of the change of ownership of the premises in 1964, told him that the new owners had been made aware of the tenancy agreement. He admitted, however, that no copy of the tenancy agreement was shown to the intending purchaser in his presence. Toh Kim Soon gave evidence on behalf of the defendant to the effect that in the course of the negotiations for the sale of the premises he informed the plaintiffs that the defendant was in occupation of the premises under a tenancy agreement for 80 years and that he told them what the terms and conditions of the agreement were. Under cross-examination he said that he went to the same solicitors as the plaintiffs to sign the sale agreement and that he did not show the solicitors the tenancy agreement, nor did they ask him whether he had entered into any tenancy agreement with the defendant.

It is to be observed that the sale agreement between Toh Kim Soon and the plaintiffs stated merely that the sale was to be without vacant possession and that there was no mention in the agreement about any tenancy agreement subject to which the premises were to be sold. In the correspondence which passed between the solicitors of the parties to this action soon after the sale there was no mention of the tenancy agreement until a copy of it was enclosed by the defendant's solicitors with their letter of 28th January, 1966 to the plaintiff's solicitors.

It would seem clear from the evidence that the tenancy agreement in question was not shown to the plaintiffs, and I do not accept the story of the defendant's witness that he told the plaintiffs anything more than that the defendant was in occupation of the premises as a tenant. The plaintiffs themselves took no steps at that stage to make inquiries from the defendant as to any document under which he held the tenancy, as they should have done. As was stated by Vaughan Williams L.J. in *Hunt* v. *Luck*,(1) "if a purchaser or a mortgagee has notice that the vendor or mortgagor is not in possession of the property, he must make inquiries of the person in possession — of the tenant who is in possession — and find out from him what his rights are, and if he does not choose to do that, then whatever title he acquires as purchaser or mortgagee will be subject to the title or right of the tenant in possession." In any event, in the present case a copy of the tenancy agreement was supplied to the plaintiffs before this action was commenced. I do not think therefore that they can be heard to say that they are not bound

by any rights of the defendant under that agreement.

That brings me to the question as to the right or title which the defendant acquired under the so-called lease. The general rule is that a document purporting to be a lease which is required under a statute to be registered is void as a lease and that from an entry upon a void lease the same result flows as from entry upon an agreement for a lease. Thus in *Doe d. Rigge* v. *Bell*,[2] Lord Kenyon C.J. said:—

"Though the agreement be void by the Statute of Frauds as to the duration of the lease, it must regulate the terms on which the tenancy subsists in other respects, as to the rent, the time of the year when the tenant is to quit, etc. So where a tenant holds over after the expiration of his term, without having entered into any new contract, he holds upon the former terms. Now, in this case, it was agreed, that the defendant should quit at Candlemas; and though the agreement is void as to the number of years for which the defendant was to hold, if the lessor chose to determine the tenancy before the expiration of the seven years, he can only put an end to it at Candlemas."

In *Clayton* v. *Blakey* [3] there was an action against a tenant for double rent, for holding over after the expiration of his term and a regular notice to quit. It appeared in evidence that the defendant had held the premises for two or three years under a parol demise for 21 years from the day mentioned to which the notice to quit referred. The Statute of Frauds directing that any lease for more than 3 years not reduced into writing shall operate only as a tenancy at will, it was contended at the trial that the holding should have been stated according to the legal operation of it as a tenancy at will, and that as there was no count adapted to that statement the plaintiff ought to be nonsuited. Rooke J., however, considering that it amounted to a tenancy from year to year, overruled the objection, and the plaintiff obtained a verdict. On a motion to set aside the verdict, on the ground of misdirection, relying upon the positive words of the Statute, Lord Kenyon C.J. said:—

"The direction was right; for such a holding now operates as a tenancy from year to year. The meaning of the statute was that such an agreement should not operate as a term; but what was then considered as a tenancy at will, has since been properly construed to ensure as a tenancy from year to year."

It has been conceded on behalf of the defendant that the tenancy agreement on which he relies is void as a lease, but his counsel has contended that the effect of the defendant's entry upon the premises under that agreement was to give him a yearly tenancy. For this he relies largely on the case of *Tress* v. *Savage*.[4] That was a case in which the entry was under a hiring agreement for a term of three years on an annual rent of £48 to be paid monthly on the 25th day of each and every month of the year the last payment whereof was to be made on the 25th day of November, 1853. The so-called lease was not made by deed. It was held that the party entering into possession under such an instrument was in the same position as that in which he would have been before the Acts (Statutes of Frauds). Coleridge J. said:—

"He has not a lease nor a tenancy for the three years and a week; but a tenancy from year to year, which, during that time is determinable by half a year's notice. If he stays to the end of the time then, by the agreement of both parties he goes out without notice."

It is to be observed that in *Tress* v. *Savage* [4] the rent reserved under the agreement was yearly rent, although it was to be paid monthly. It was for that reason that an inference of a tenancy from year to year was drawn in that case. In this connection Parke B. in the case of *Braythwayte* v. *Hitchcock* [5] said:—

"Although the law is clearly settled, that where there has been an agreement for a lease and an occupation without payment of rent, the occupier is a mere tenant at will; yet it has been held that if he subsequently pays rent under that agreement he thereby becomes tenant from year to year. Payment of rent, indeed, must be understood to mean a payment with reference to a yearly holding; for in *Richardson* v. *Langridge* (4 Taunt. 128), a party who had paid rent under an agreement of this description, but had not paid it with reference to a year, or any aliquot part of a year, was held nevertheless to be a tenant at will only."

What Parke B. said in *Braythwayte* v. *Hitchcock* [5] was cited with approval in the case of *Ladies' Hosiery and Underwear, Limited* v. *Parker* [6] in which it was held that the inference of a tenancy from year to year, which is drawn from the payment of rent by a tenant after the expiration of his tenancy, ought to be drawn only when such payments are by references to a yearly rent. Maugham J. said in that case at page 328:—

"In the present case, the lease or agreement is one for three years at a rent of £2 a week. It is not a lease for three years at a rent of £104 per annum payable weekly, and it is observable that £2 a week is a rent which, as we all know, is not exactly divisible into the the number of days either of an ordinary year or of a leap year. I cannot find, and counsel have been unable to find, any case exactly in point; but I have come to the conclusion that there is no reason for extending the views, which are binding on me, as to the terms which justify the inference that a tenancy is from year to year, and that in this case, narrow as the distinction is, the holding over of the premises after the expiration of the agreement of October 10, 1914, would have resulted only, and did result only, in the tenant's being a tenant from week to week."

Thus his Lordship held in effect that it was essential to the implication of a yearly tenancy after the determination of a letting for a year or for a term of years that the rent should be an annual sum. His view was that where the rent in the original letting was otherwise expressed (as in the case before him where the original letting was for three years at a rent of £2 a week), there was no ground for the implication of a yearly tenancy.

In *Adler* v. *Blackman* [7] it was held, applying the *dictum* of Maugham J. in *Ladies' Hosiery and Underwear Limited* v. *Parker* [6] and in overruling the decision of Macnaghten J. in *Covered Markets Limited* v. *Green*,[8] that where in a tenancy agreement for one year the rent is expressed to be so much per week, and the tenant holds over at the end of the term, only a weekly tenancy should be presumed. Jenkins L.J. said in that case at page 151:—

"With the exceptions to which I will later refer, I think all the cases in which an implication of a yearly tenancy taking effect after the termination of a letting for one year, or a term of years, has been held to have been raised have been cases where the original letting, from which the implication was deduced, was a letting for a year or for a term of years at an annual rent, that is to say, a rent expressed as an annual sum, by whatever instalments it may have been made payable."

His Lordship went on to say that the reasoning of Maugham J. in *Ladies' Hosiery and Underwear Limited* v. *Parker* [6] was to be preferred to the view taken in *Covered Markets Limited* v. *Green* [8] and the two Australian cases of *Bank of Victoria* v. *M'Hutchison* [9] and *Box* v. *Attfield* [10] which constituted the exceptions which he had mentioned.

The legal position with regard to a tenancy which may arise by implication of law is summarised by *Woodfall* on Landlord and Tenant Vol. I (26th edition) at page 296 as follows:—

"A tenancy from year to year may also arise by implication of law. Where a person is let into possession under a mere agreement for a future lease, he becomes at common law a tenant at will; but when he pays or expressly agrees to pay any part of the annual rent thereby reserved, his tenancy at will changes into a tenancy from year to year, upon the terms of the intended lease, so far as they are applicable to and not inconsistent with a yearly tenancy. By continuing to hold possession and to pay rent after an assignment of the reversion he becomes at law tenant from year to year under the assignee. The same result flows from entry upon a void lease as from entry upon an agreement for a lease."

At page 297 it is stated:—

"Where a tenant for a term of years holds over after the expiration of his lease, he becomes a tenant on sufferance; but when he pays, or expressly agrees to pay, any subsequent rent, at the previous yearly rate, a new tenancy from year to year may thereby be created upon the same terms and conditions as those contained in the expired lease, so far as the same are applicable to and not inconsistent with a yearly tenancy."

Then at page 298 comes the following passage, which in my opinion concludes the matter in so far as the nature of the tenancy in the present case is concerned:—

"The inference of a tenancy from year to year is to be drawn only where the payments bear reference to a yearly rent; there is thus an important distinction between a monthly or quarterly rent and monthly or quarterly instalments of a yearly rent. Where in a tenancy agreement for one year the rent is expressed to be so much per week, and the tenant holds over paying the same weekly rent, only a weekly tenancy should be presumed."

Counsel for the defence has also sought to rely on the case of *Toh Ching Kwan* v. *Ng Ah Kak & Anor.*[11] in which Wilson J. decided that the agreement under which the appellant went into possession of the land was null and void as it had not been registered, but that as he had gone into possession of the land and occupied it and paid rent, a tenancy from year to year was thereby created, although the rent was to be paid and was paid monthly. Mr. Marjoribanks, counsel for the plaintiffs in this case, informed the court that he had appeared for the respondents in that case and cited the cases of *Ladies' Hosiery and Underwear, Limited* v. *Parker* [6] and *Adler* v. *Blackman*,[7] although they were not discussed by Wilson J. in his judgment. Assuming that to be so I cannot help thinking that had these two cases been considered by his Lordship in that case he might well have arrived at a different conclusion. I am therefore of the opinion with respect that case was wrongly decided.

It is clear from the authorities which I have discussed that in the present case the agreement under which the defendant went into occupation of the premises at No. 33 Newcome Road, Malacca was void as a lease by reason of the provisions of section 5 of the Registration of Deeds Ordinance (S.S. Cap. 121). The result of his entry upon that void lease was the same as would flow from an entry upon an agreement for a lease. Upon his entry the legal relationship of landlord and tenant arose and he became a tenant at will. When he paid the monthly rent reserved under the so-called lease the tenancy at will changed into a tenancy from month to month upon the terms of the intended lease. It was subject to this monthly tenancy that the the premises must be deemed to have been sold to the plaintiffs, so that the defendant became a monthly tenant of the plaintiffs. This monthly tenancy was determined by the plaintiffs by the notice to quit. In my judgment that was a valid notice to quit so that the defendant is in wrongful occupation of the premises as claimed by the plaintiffs. The plaintiffs are therefore entitled to judgment as prayed. The order of court will be that the defendant do quit and deliver up vacant possession of the premises on or before 31st October, 1968 and that he do pay *mesne* profits at the rate of $300 per month from the 1st day of May, 1966 up to the delivery up of vacant possession. He must also pay costs of this action.

Judgment for the plaintiffs.

Solicitors: *Lovelace & Hastings; Sault, Keith-Sellar & Co.*